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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1088th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 July 1991, at 3.30 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.50 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

General comment on article 7 of the Covenant (continued)

1. The CHAIRMAN invited the Committee to consider the revised draft general comment on article 7 of the Covenant (CCPR/C/42/CRP.2/Rev.1).

Paragraph 1

2. Miss CHANET, recalling that she had been absent from the discussion during the earlier part of the session, said the opening statement that the general comment was supplementary to general comment No. 7 [16] somewhat surprised her: it had been her understanding, in assuming responsibility for preparing the initial draft, that it was to replace, not supplement, its predecessor. She had acted on that understanding: she had set out to reflect the content of the latter in the text that had been submitted to the Committee, although some additional considerations had been incorporated. To make it clear that the new general comment replaced general comment No. 7 [16] would not only correspond to reality; it would relieve States parties of the difficulty of considering together two general comments on the same article, and avoid the danger of creating a precedent. It was true that there were two general comments on article 6, but each addressed completely different issues.

3. Mr. MYULLERSON and Mr. MAVROMMATIS endorsed those remarks. The matter had been debated at length. Paragraph 1 should be amended to indicate clearly that the new general comment replaced general comment No. 7 [16].

4. After a discussion in which Miss CHANET, Mr. ANDO and Mr. NDIAYE took part, the CHAIRMAN suggested the following amended version of paragraph 1: "This general comment replaces general comment No. 7 [16], reflecting and further developing it."

5. Paragraph 1, as amended, was adopted.

Paragraph 2

6. Mr. HERNDL suggested that the text of article 7 should be accommodated in some manner as a means of removing a certain vagueness in the articulation between paragraphs 1 and 2.

7. Mr. MYULLERSON suggested that paragraph 2 might begin with the words: "The aim of the provision of article 7 is ...".

8. Mr. NDIAYE reiterated his dissatisfaction, voiced during the earlier discussion, with the wording used in the French version of the paragraph, and proposed a series of minor drafting changes.

9. Mr. MYULLERSON asked what was meant by the reference to the "positive" requirements of article 10 (1) of the Covenant.

10. Miss CHANET said it was her understanding that the interdictions embodied in article 7, which might be described as negative, were seen as being complemented by the "positive" requirements of article 10 (1).

11. Paragraph 2, amended in accordance with Mr. Myullerson's suggestion and subject to minor drafting changes to the French version, was adopted.

Paragraph 3

12. The CHAIRMAN suggested that, in the last sentence, the word "pleaded" should be replaced by "invoked".

13. Paragraph 3, as amended, was adopted.

Paragraph 4

14. Paragraph 4 was adopted subject to minor drafting changes.

Paragraph 5

15. After a discussion in which Mr. AGUILAR URBINA, Miss CHANET, Mr. NDIAYE, Mr. EL SHAFEI, Mr. MAVROMMATIS, Mr. MYULLERSON and Mr. WENNERGREN took part concerning the importance of the combination of physical pain and mental suffering, the desirability or otherwise of qualifying physical pain with the word "severe" and the "particular circumstances", such as undue delay, etc., in which the carrying out of the death penalty could amount to cruel or inhuman treatment, the CHAIRMAN suggested that the word "severe" in the second line and the whole of the final sentence should be deleted.

16. Paragraph 5, as amended, was adopted.

Paragraph 6

17. Miss CHANET drew attention to the following passage in general comment 7 [16], which had not been reflected in the general comment now under consideration: "It [the Committee] takes the view that at least in countries where science and medicine are highly developed, and even for peoples and areas outside their borders if affected by their experiments, more attention should be given to the possible need and means to ensure the observance of this provision."

18. Mr. NDIAYE thought that the idea expressed in the sentence referred to by Miss Chanet should be incorporated but that it should not be confined to highly developed countries or the peoples of foreign territories.

19. The CHAIRMAN suggested that the words "and means" should be inserted in the third sentence of paragraph 6 after the word "need" and that the following text should be added after that sentence: "The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent."

20. Paragraph 6, as amended, was adopted.

Paragraph 7

21. Mr. EL SHAFEI, referring to the last sentence of the paragraph, said that in practice it would be difficult for a State to provide a guarantee that individuals would not be subjected to torture.

22. The CHAIRMAN suggested that the sentence should be amended to read: "States parties should indicate in their reports what measures they have adopted to that end."

23. In response to a point raised by Mr. WENNERGREN concerning the first sentence, the CHAIRMAN suggested that the words "as a consequence of" should be replaced by the word "upon".

24. Paragraph 7, as amended, was adopted.

Paragraph 8

25. Paragraph 8 was adopted.

26. The CHAIRMAN informed members that Mr. Houshmand of the Secretariat had suggested that paragraph 7 should follow paragraph 8, since the latter paragraph referred to internal measures and the former related to measures concerning possible torture abroad. In that event, he suggested that the word "also" in the existing paragraph 8 should be deleted.

27. If there was no objection, he would take it that the Committee agreed to those suggestions.

28. It was so decided.

29. Paragraph 8, as amended, was adopted.

Paragraph 9

30. Mr. NDIAYE suggested that in the second sentence, the words "in that regard" should be deleted.

31. Paragraph 9, as amended, was adopted.

Paragraph 10

32. Mr. NDIAYE, referring to the French text, pointed out that in the third line the word "sur" should be replaced by the word "pour".

33. After a discussion between Mr. NDIAYE and Miss CHANET concerning the wording of the French text of the second sentence, the CHAIRMAN said that the Secretariat would redraft it in such a way as to bring it into line with the corresponding provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

34. Mr. EL SHAFEI suggested that, in the penultimate sentence, the words "as a guarantee for the increased protection of detainees" were superfluous and should be deleted.

35. It was so decided.

36. Mr. ANDO proposed that, in the second sentence, the words "under systematic review" should be inserted before the word "interrogation".

37. It was so decided.

38. The CHAIRMAN said, with regard to the penultimate sentence, that it would be preferable to replace the word "having" by the word "giving".

39. It was so decided.

40. In response to a point raised by Mr. NDIAYE, Miss CHANET recalled that the Committee had decided to retain the words "including relatives and friends" at the end of the third sentence. It seemed to her that Mr. Ndiaye was seeking to reopen the debate.

41. Mr. WAKO said that he was in favour of deleting the expression which, he feared, might enable a family to discover the names of those interrogating a suspect and hence to prejudice an investigation prior to its completion.

42. After a discussion in which Mr. MAVROMMATIS, Mr. HERNDL, Mr. MYULLERSON, Mr. AGUILAR URBINA, Mr. NDIAYE, Mr. WAKO and Mr. WENNERGREN took part, the CHAIRMAN suggested that in the sentence prior to that under discussion the words "including relatives and friends" should be inserted after "concerned" and that the last phrase of the sentence under discussion should be amended to read: "this information should also be available for purposes of judicial or administrative proceedings".

43. It was so decided.

44. Paragraph 10, as amended, was adopted.

Paragraph 11

45. Paragraph 11 was adopted.

Paragraph 12

46. Mr. EL SHAFEI said that the information requirements contained in paragraph 12 placed too great a burden on States parties.

47. The CHAIRMAN observed that it was possible, and indeed common practice, for States parties to provide information in the form of annexes - including, for example, a copy of the Penal Code - to the report.

48. Mr. NDIAYE also expressed concern that States parties would find it onerous to meet the requirements of the paragraph and suggested that they should rather be requested to provide relevant information of the type referred to in paragraph 11 at the time when their respective reports were being considered.

49. Mr. DIMITRIJEVIC observed that the paragraph stated the States parties should simply "indicate" the relevant provisions in their reports, which was in fact in keeping with normal practice when reports were presented. It did not appear to him that too heavy a burden was being imposed on States parties.

50. The CHAIRMAN said it was clear from the general guidelines regarding the form and contents of reports (CCPR/C/5) that annexes were considered to be an integral part of the report. A reference in the report to the relevant annex would therefore be sufficient.

51. Mr. NDIAYE suggested that it should simply be stated that States parties might provide such information "when presenting their reports".

52. It was so decided.

The meeting rose at 6 p.m.